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LOH SIEW HONG v. PENDAFTAR MUALAF PERLIS & ORS

COURT OF APPEAL, PUTRAJAYA
HADHARIAH SYED ISMAIL JCA
HASHIM HAMZAH JCA
AZHAHARI KAMAL RAMLI JCA
B [CIVIL APPEAL NO: W-01(A)-255-05-2023]
22 JANUARY 2024

Abstract – *(i) A unilateral conversion of a child to Islam is unlawful, null and void if consent is not obtained from the person who is entitled to the custodian of the child before the said child is converted; (ii) The word 'parent' in art. 12(4) of the Federal Constitution ('FC') means both parents. Therefore, s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006, which employs the singular word of 'mother or father', is inconsistent with art. 12(4) of the FC and is, therefore, null and void; (iii) As the prescription of the FC in the national language has not been approved by the Yang di-Pertuan Agong, the English version of the FC remains the authoritative text and prevails over the Malay version.*

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ADMINISTRATIVE LAW: *Judicial review – Appeal – Challenge against unilateral conversion to Islam of minor children – Non-muslim mother granted sole custody, care and control of children – Children unilaterally converted to Islam by father without mother's consent – Whether unilateral conversions legal – Principles established in Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals*

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CONSTITUTIONAL LAW: *Legislation – Constitutionality – Perlis Administration of the Religion of Islam Enactment 2006, s. 117(b) – Challenge against legality of conversion to Islam of minor children – Non-muslim mother granted sole custody, care and control of children – Children unilaterally converted to Islam by father without mother's consent – Whether s. 117(b), which uses singular word of 'mother or father', inconsistent with art. 12(4) of Federal Constitution which provides that 'parent' means both parents – Whether s. 117(b) unconstitutional, null and void*

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H ***CONSTITUTIONAL LAW:*** *Federal Constitution – Malay version – Whether Malay version of Federal Constitution authoritative text – Whether prevails over English version – Whether prescription of Federal Constitution in national language approved by Yang di-Pertuan Agong*

I

The appellant, a Buddhist, and her former husband ('Nagahswaran'), a Hindu, were married under the Law Reform (Marriage and Divorce) Act 1976 in 2008 and were blessed with three children. The appellant was separated from the children between 2019 and 2022 after she was beaten up and chased out of their matrimonial home by Nagahswaran. The appellant filed a divorce petition at the High Court and successfully obtained an *ad interim* order for the sole guardianship, care and control of the children. Despite having full knowledge of this, Nagahswaran refused to hand over the children to the appellant. In the meantime, Nagahswaran and the children had converted to Islam. A certificate of *decree nisi* made absolute was later issued in September 2021 and the appellant was granted sole custody, care and control over the children. When Nagahswaran was sentenced to imprisonment for a drug-related offence from November 2020 to November 2022, the children were placed in Islamic hostels by a Muslim preacher who, at the material time, acted as the *de facto* guardian of the children. The appellant filed an application for a writ of *habeas corpus* at the High Court and it was only then that she was able to get physical custody of the children. The appellant commenced an application for judicial review at the High Court, challenging the legality of the children's conversion. The High Court dismissed the application. Hence, the present appeal. The issues that arose for determination were: (i) whether the unilateral conversion was lawful ('first issue'); (ii) whether s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 ('Enactment') is inconsistent with art. 12(4) of the Federal Constitution ('FC') and therefore, unconstitutional, null and void ('second issue'); and (iii) whether the FC, in the national language, was the authoritative text ('third issue').

Held (allowing appeal)

Per Hadhariah Syed Ismail JCA delivering the judgment of the court:

(1) The facts of the present case were similar to that of *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* ('*Indira Gandhi*'). Apart from its binding effect on the lower courts, *Indira Gandhi* established that (i) both the father and mother had equal rights to decide on the religion of a minor child. This is the constitutional right of each spouse under art. 12(4) of the FC. Therefore, consent must be obtained from both parents; (ii) when custody, care and control of the children is given to the father or mother, the person who is entitled to the custodian has the right to decide all questions relating to the upbringing and education of the child, including what religion the child should have; and (iii) consent should have been obtained from the person who is entitled to the custodian of the child before a child is converted. If consent is not obtained, the constitutional right is violated and the conversion is null and void. It was reasonable for the appellant

to expect that the High Court would follow *Indira Gandhi* and would allow her application. Unfortunately, the High Court Judge ('HCJ') disregarded *Indira Gandhi*. The HCJ committed the following errors of law by: (i) failing to abide by the principle of *stare decisis* in failing to follow *Indira Gandhi*; (ii) relying on cases which had totally different facts and issues from the case at hand; (iii) not answering the first issue; and (iv) making a wrong decision. Had the HCJ followed *Indira Gandhi*, it would have been decided that without the consent of the appellant, Nagahswaran had no right to convert the children to Islam and thus, the unilateral conversion was unlawful. (paras 44, 45 & 55)

(2) The HCJ failed to address His Lordship's mind to the second issue and failed to answer the same. Based on *Indira Gandhi*, the word 'parent' in art. 12(4) of the FC means both parents. Therefore, s. 117(b) of the Enactment, which used the singular word of 'mother or father', was inconsistent with art. 12(4). Article 4 of the FC provides that the FC is the supreme law of the Federation and any law which is inconsistent with the FC is void to the extent of the inconsistency. Therefore, based on art. 4 of the FC, s. 117(b) of the Enactment is inconsistent with art. 12(4) of the FC and is therefore null and void. (paras 56 & 60-62)

(3) The respondents contended that the Malay version of the FC, which required the consent of either the father or mother to convert a minor, shall prevail over the English version. This was a non-starter. The prescription of the FC in the national language had not been approved by the Yang di-Pertuan Agong. Until such prescription is approved, the English version of the FC is the authoritative text. (paras 29 & 33)

Case(s) referred to:

Chang Ah Mee v. Jabatan Hal Ehwal Agama Islam & Ors [2003] 1 CLJ 458 HC ***(refd)***

Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals [2018] 3 CLJ 145 FC ***(foll)***

Majlis Agama Islam Selangor v. Dahlia Dhaima Abdullah & Another Appeal [2023] 2 CLJ 513 CA ***(refd)***

Pendaftar Muallaf Wilayah Persekutuan v. LCY & Ors And Another Appeal [2021] CLJU 2079; [2021] 1 LNS 2079 CA ***(refd)***

Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor [2021] 3 CLJ 301 FC ***(refd)***

Legislation referred to:

Administration of Muslim Law Enactment 1952 (Selangor) (Enactment No 3 of 1952), s. 147

Administration of the Religion of Islam (Amendment) Enactment 2016 (Perlis) (Enactment A47), s. 7

Administration of the Religion of Islam Enactment 2006 (Perlis) (Enactment 4), s. 117(b)

Federal Constitution, arts. 4, 12(3), (4), 160B

For the appellant - Srimurugan Alagan, Gunamalar Joorindanjn, Shamsher Singh, Thind & Thian Yee Chin; M/s Srimurugan & Co
For the 1st, 3rd & 4th respondents - Mohd Radhi Abas & Ainul Wardah Shahidan; SLAs, Perlis
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[Editor's note: For the High Court judgment, please see Loh Siew Hong v. Pendaftar Mualaf Negeri Perlis & Ors [2023] 8 CLJ 158 (overruled).]

Reported by Najib Tamby

JUDGMENT

Hadhariah Syed Ismail JCA:

Introduction

[1] This is a case of a father who had consented to convert his three minor children (a twin girls aged 11 and a boy aged 9) from the Hindu religion to the religion of Islam without the knowledge and consent of the children's mother, namely Loh Siew Hong, the appellant herein. The unilateral conversion is not disputed by the respondents.

[2] The appellant challenged the legality of the conversion. She contended that without her consent, her children's conversion to Islam is null and void. She also contended that without her consent as the sole guardian of the children, the first respondent cannot issue certificates of conversion to her children; that the certificates are null and void and her children remain as Hindus.

[3] The appellant then applied by way of judicial review application at the Kuala Lumpur High Court, seeking for the following reliefs:

(a) perintah deklarasi untuk mengisytiharkan bahawa Sulochana a/p Nagahswaran, Sulochini a/p Nagahswaran dan Thatchina Moorthi a/l Nagahswaran adalah penganut-penganut agama Hindu;

(b) perintah deklarasi untuk mengisytiharkan bahawa Nagahswaran a/l Muniandy tidak mempunyai keupayaan dari segi undang-undang untuk membenarkan responden pertama mendaftarkan Sulochana a/p Nagahswaran, Sulochini a/p Nagahswaran dan Thatchina Moorthi a/l Nagahswaran sebagai mualaf, tanpa keizinan pemohon;

(c) perintah deklarasi untuk mengisytiharkan bahawa Sulochana a/p Nagahswaran, Sulochini a/p Nagahswaran dan Thatchina Moorthi a/l Nagahswaran, sebagai kanak-kanak, tidak mempunyai keupayaan dari segi undang-undang untuk memeluk agama Islam, tanpa keizinan pemohon;

A (d) perintah *certiorari* untuk membatalkan Akuan-Akuan Memeluk Agama Islam bertarikh 7 Julai 2020 yang dikeluarkan oleh responden pertama atas nama-nama Sulochana a/p Nagahswaran (Daftar No. JAIPs DAK. 02 Fol 17/2020), Sulochini a/p Nagahswaran (Daftar No. JAIPs. DAK 02 Fol 18/2020) dan Thatchina Moorthi a/l Nagahswaran (Daftar No. JAIPs DAK. 02 Fol 16/2020);

B (e) perintah *certiorari* untuk membatalkan Kad-Kad Rasmi Memeluk Agama Islam atas nama-nama Sulochana a/p Nagahswaran, Sulochini a/p Nagahswaran dan Thatchina Moorthi a/l Nagahswaran, jika ia telah dikeluarkan oleh responden pertama atau mana-mana pihak lain, atau perintah larangan untuk C menghalang responden pertama atau mana-mana pihak lain mengeluarkan Kad-Kad Rasmi Memeluk Agama Islam atas nama-nama Sulochana a/p Nagahswaran, Sulochini a/p Nagahswaran dan Thatchina Moorthi a/l Nagahswaran, jika ia masih belum dikeluarkan lagi;

D (f) perintah *mandamus* untuk mengarahkan responden pertama memadamkan atau membatalkan dalam Daftar Mualaf Negeri Perlis nama-nama Sulochana a/p Nagahswaran, Sulochini a/p Nagahswaran dan Thatchina Moorthi a/l Nagahswaran, dan juga nama-nama Islam mereka iaitu Nur Sulochana binti Nagahswaran, Nur Sulochini binti Nagahswaran dan Muhammad Thatchina Moorthi E bin Nagahswaran;

(g) perintah larangan untuk menghalang responden ketiga, sama ada secara sendiri atau melalui mana-mana pegawai, pekerja atau agen Jabatan Mufti Negeri Perlis, membuat apa-apa kenyataan yang secara nyata atau tersirat boleh membawa maksud bahawa F Sulochana a/p Nagahswaran, Sulochini a/p Nagahswaran dan Thatchina Moorthi ialah kanak-kanak mualaf atau kanak-kanak beragama Islam;

(h) perintah deklarasi untuk mengisytiharkan bahawa seksyen 117(b) Enakmen Pentadbiran Agama Islam 2006, dalam versi Bahasa Malaysia dan Bahasa Inggeris, sepertimana yang dipinda oleh G seksyen 7 Enakmen Pentadbiran Agama Islam (Pindaan) 2016, setakat mana memberi kuasa kepada responden pertama untuk mendaftarkan seorang kanak-kanak sebagai mualaf hanya dengan keizinan daripada ibu atau bapa kanak-kanak tersebut, walaupun kedua-dua mereka masih hidup adalah tidak berpelembagaan dan, oleh itu, adalah tidak sah dan batal, setakat itu; dan

H (i) perintah yang patut supaya responden ke-empat memberi kesan kepada semua perintah-perintah di atas.

[4] On 11 May 2023, the learned High Court Judge dismissed the appellant's judicial review application with no order as to costs.

I **[5]** Aggrieved with the decision of the High Court, the appellant appealed to this court.

Facts Of The Case

[6] The appellant and her former husband, Nagahswaran a/l Muniandy (Nagahswaran), were married under the Law Reform (Marriage and Divorce) Act 1976 on 25 May 2008. The appellant was a Buddhist. Nagahswaran was a Hindu.

[7] There were three children from the said marriage, as follows:

(i) Sulochana a/p Nagahswaran, born on 7 November 2008;

(ii) Sulochini a/p Nagahswaran, born on 7 November 2008; and

(iii) Thatchina Moorthi a/l Nagahswaran, born on 26 May 2011.

[8] The appellant was separated from her three children from 3 March 2019 until 21 February 2022 after she was beaten up and chased out of their matrimonial home by Nagahswaran.

[9] On 13 December 2019, the appellant filed a divorce petition at the Kuala Lumpur High Court *vide* Divorce Petition No. WA-33-734-12-2019. In the divorce proceedings, each party was represented by a legal counsel.

[10] On 7 January 2020, the appellant obtained an *ad interim* order from the Kuala Lumpur High Court for the sole guardianship, care and control of her three children. Despite having the full knowledge of the custody order issued by the High Court, Nagahswaran refused to hand over the children to the appellant. Her attempts to get back her children were unsuccessful.

[11] A certificate of *decree nisi* made absolute was issued on 22 September 2021. *Vide* a High Court order dated 31 March 2021, the appellant was granted sole custody, care and control of all the three children.

[12] Prior to the fact stated in para. 11 above, on 7 July 2020, one Abdul Khadir, alleged to be an old friend of Nagahswaran, brought Nagahswaran together with the three children to the office of Jabatan Hal Ehwal Agama Islam Negeri Perlis (JAIPS) because Nagahswaran wanted to convert to Islam along with the three children. When asked about the children's mother, Nagahswaran told the second respondent that the appellant had left him two years prior to 7 July 2020 and he does not know where she is. This is a blatant lie by Nagahswaran because at the material time, the divorce proceedings were ongoing and he knew the whereabouts of the appellant.

[13] Since s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 allows either the father or the mother of the minors' to consent to the conversion, the second respondent was satisfied that the consent of Nagahswaran as the father fulfils the legal requirement for the second respondent to proceed with the conversion of the three children.

[14] Thereafter, the second respondent alleged that Nagahswaran, along with the three children had, one after another, uttered the Islamic affirmation of faith in Arabic, followed by its meaning in Malay, "Aku menjadi saksi bahawa tiada Tuhan melainkan Allah dan aku menjadi saksi bahawa Nabi Muhammad SAW ialah Pesuruh Allah".

[15] Satisfied that Nagahswaran and the three children had fulfilled the Islamic principles for conversion into Islam, the Registrar of Mualafs (the first respondent) registered their conversion to the Islamic faith in the prescribed Register of Mualafs, and thereafter issued their respective Certificate of Conversion into Islam (Akuan Memeluk Agama Islam) as follows:

(i) Akuan Memeluk Agama Islam Sulochana a/p Nagahswaran, No. Kad Pengenalan: 081107-02-0616, No. Daftar: JAIPs. DAK. 02 Fol. 17/2020 bertarikh 7 July 2020;

(ii) Akuan Memeluk Agama Islam Sulochini a/p Nagahswaran, No. Kad Pengenalan: 081107-02-0616, No. Daftar: JAIPs. DAK 02 Fol. 18/2020 bertarikh 7 July 2020; and

(iii) Akuan Memeluk Agama Islam Thatchina Moorthi a/l Nagahswaran, No. Kad Pengenalan: 110526-01-1239, No. Daftar: JAIPs. DAK. 02 Fol. 16/2020 bertarikh 7 July 2020.

[16] When Nagahswaran was sentenced to imprisonment for a drug-related offence from 13 November 2020 to 11 November 2022, the three children were placed in Islamic hostels by a Muslim preacher, one Nazirah Nanthakumari binti Abdullah, who at the material time acted as the *de facto* guardian of the three children.

[17] To get back her children, the appellant filed an application for a writ of *habeas corpus* at the Kuala Lumpur High Court *vide* Criminal Application No. WA-44-28-02-2022. Only when the High Court had issued a writ of *habeas corpus* on 21 February 2022, that the appellant was able to get the physical custody of her three children.

At The High Court

[18] The issues to be determined by the High Court are as follows:

(i) whether the unilateral conversion of the three children is lawful or constitutional.

(ii) whether the Bahasa Malaysia version of the Federal Constitution is the authoritative text.

(iii) whether s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 which require the consent of either the father or the mother is inconsistent with art. 12(4) of the Federal Constitution and is therefore unconstitutional.

[19] The learned High Court Judge held the English version of the Federal Constitution is the authoritative text. Nevertheless, His Lordship dismissed the appellant's application based on the following reasons:

(i) the certificates of conversion issued by the first respondent to the three children are conclusive proof they were Muslims and the conversion to Islam is valid. In coming to that decision, His Lordship relies on the Court of Appeal decision in the case of *Majlis Agama Islam Selangor v. Dahlia Dhaima Abdullah & Another Appeal* [2023] 2 CLJ 513.

(ii) the three children continued professing the religion of Islam when they were in the appellant's custody. His Lordship relies on the Federal Court decision in the case of *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301.

The Appeal

[20] The main complaints of the appellant against the decision of the High Court is the learned High Court Judge did not address the two pertinent issues in the judicial review proceedings. The two issues are:

(i) whether the unilateral conversion is lawful; and

(ii) whether s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 is inconsistent with art. 12(4) of the Federal Constitution and is therefore unconstitutional, null and void.

[21] We noted that the respondents, in their written submission, had submitted that the Federal Constitution in the national language is the authoritative text. To put matters at rest, we add the third issue as follows:

(iii) whether the Federal Constitution in the national language is the authoritative text.

[22] We proposed to deal with the third issue first.

Authoritative Text

[23] Before us, the respondents still maintain their position that the Federal Constitution in the national language is the authoritative text.

[24] The English version of art. 12(3) and (4) of the Federal Constitution read as follows:

> 12. Right in respect of education
>
> (3) No person shall be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own.
>
> (4) For the purposes of Clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

[25] The Bahasa Malaysia translation of art. 12(4) in the national language reads as follows:

> (4) Bagi maksud Fasal (3) agama seseorang yang di bawah umur lapan belas tahun hendaklah ditetapkan oleh ibu atau bapanya atau penjaganya.

[26] Article 160B of the English version of the Federal Constitution states:

> 160B. Authoritative text
>
> Where this Constitution has been translated into the national language, the Yang di-Pertuan Agong may precribe such national language text to be authoritative, and thereafter if there is any conflict of disagreeing between such national language text and the English language text of this Constitution, the national language text shall prevail over the English language text.

[27] In dealing with art. 160B, the Federal Court in *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145, Her Ladyship Zainun Ali (FCJ) said:

> [147] In the present appeals, despite the learned State Legal Adviser's reliance on art. 160B, no evidence of the necessary prescription was adduced by either of the respondents. In the circumstances, we will proceed on the basis that the English version to be the authoritative text.

[28] Coming back to the present case. At the High Court, all the respondents argued that:

> The Yang di-Pertuan Agong has launched the Malay version of the Federal Constitution on 29 September 2003, which according to Article 160B should be the authoritative text. According to Article 12 Clause (4) of the said Malay version, a minor's religion shall be determined by his mother or father (ibu atau bapa). As such, the decision of the Federal Court in the case of *Indira Gandhi Mutho* invalidating the unilateral conversion of the minors to Islam, on the basis that there is no evidence of the existence of the said Malay version, is made *per incuriam*.

[29] In simple language, the respondents contended that the Malay version which require the consent of either the father or mother to convert a minor shall prevail over the English version.

[30] The learned High Court Judge rightly rejected the respondents' argument and held the English version of the Federal Constitution is the authoritative text on the basis of the prescription referred to in art. 160B of the Federal Constitution could not mean a mere physical presence of the Yang di-Pertuan Agong in an official function and the translation is not an authoritative text of the national language.

[31] We took note that the Malay translation had put a caveat in the following words:

> Teks ini HANYALAH TERJEMAHAN oleh Jabatan Peguam Negara bagi Federal Constitution. Melainkan jika dan sehingga ditetapkan sahih di bawah Perkara 160B Perlembagaan Persekutuan, teks ini bukan perundangan.

[32] We also took note of the speech of the former Attorney General of Malaysia at the Opening of the Legal Year 2023, wherein it was stated:

> The Federal Constitution acts as our cornerstone in implementing the separation of powers. Therefore, for the year 2023, pursuant to Article 160A of the Federal Constitution, the AGC plans to reprint the Federal Constitution to incorporate the latest historic constitutional amendments. The AGC also plans to propose to the Government that the prescription of the Federal Constitution in the national language to be the authoritative text in line with Article 160B of the Federal Constitution. These two plans are subject to the approval of the Yang di-Pertuan Agong.

[33] Therefore, as day follows night, the respondents' argument that the Malay translation of the Federal Constitution is the authoritative text is a non-starter because the prescription of the Federal Constitution in the national language has not been approved by the Yang di-Pertuan Agong. Until such prescription is approved, the English version of the Federal Constitution is the authoritative text. Therefore, it is wrong for the respondents to say the decision of the Federal Court in *Indira Gandhi* on this issue is made *per incuriam*. It matters not whether there is a Malay version of the Federal Constitution but rather whether there is a prescription of the Federal Constitution in the national language as the authoritative text. Since there is no prescription, the learned High Court Judge is correct in his decision to follow *Indira Gandhi*.

Unilateral Conversion

[34] In *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145, the appellant's former husband had converted their three minor children to the religion of Islam without the consent of the appellant. One of the issues for determination by the Federal Court is whether the mother and the father (if both are still surviving) of a child of a civil marriage must consent before a certificate of conversion to Islam could be issued in respect of that child.

[35] In delivering the judgment of the court, Zainun Ali FCJ held:

> [157] Conversion to another religion is a momentous decision affecting the life of a child, imposing on him a new and different set of personal laws. Where a decision of such significance as the conversion of a child is made, it is undoubtedly in the best interests of the child that the consent of both parents must be sought. The contrary approach of allowing the child to be converted on the consent of only one parent

would give rise to practical conundrums. A purposive reading of art. 12(4) of the Federal Constitution that promotes the welfare of the child and is consistent with good sense would require the consent of both parents (if both are living) for the conversion of a minor.

[161] Since custody of the children had been granted to the appellant, it was the appellant who exercised the dominant influence in their lives. To allow the other spouse to unilaterally convert the children without the appellant's consent would amount to a serious interference with the lifestyle of the family.

[175] Based on a purposive interpretation of art. 12(4) read with the Eleventh Schedule of the Federal Constitution, and on application of sections 5 and 11 of the GIA, it is concluded that the consent of both the appellant and her husband are required before a Certificate of Conversion to Islam can be issued in respect of the children.

[36] A recent case of unilateral conversion is *Pendaftar Muallaf Wilayah Persekutuan v. LCY & Ors And Another Appeal* [2021] CLJU 2079; [2021] 1 LNS 2079; [2022] 2 MLRA 167. In that case, the mother had converted her two minor children to Islam without the consent of her husband. The custody, care and control of the two children was given to the husband. The husband applied for an order of *certiorari* to quash the conversion of religion of the children and the decision of the appellant in issuing the Certificate of Conversion to Islam. The High Court granted the husband's application. The appellant appealed to the Court of Appeal. At the Court of Appeal, the appellant argued that *Indira Gandhi*'s case does not apply to all unilateral conversion cases and that the said case was decided *per incuriam*.

[37] In dismissing the appellant's appeal, His Lordship Nordin Hassan JCA (now FCJ) said:

[28] The Federal Court in *Indira Gandhi* in answering a specific question of law, had considered the relevant facts and applied the law as can be seen from paras 142 until 181 of the grounds of judgment. All relevant statutory provisions and previous Federal Court decisions on the same issue including *Subashini* has been analysed and considered before the decision on the issue was decided. As such, the decision in *Indira Gandhi* that consent of both parents are required before the Certificate of Conversion to Islam can be issued, is in our view, the *ratio decidendi* of the case.

[33] In the circumstances and based on the principles of *stare decisis*, the High Court and this Court are bound by the decision in *Indira Gandhi.*

[38] Relying on *Indira Gandhi* and *Pendaftar Muallaf*, learned counsel for the appellant submitted that the learned High Court Judge had erred in law and in fact in not following these two cases when the facts in the present case is similar to those cases and the cases are binding on the High Court.

[39] On the other hand, counsels for the respondents submitted that *Indira Gandhi* does not apply to every case of unilateral conversion; that *Indira Gandhi* was decided *per incuriam*; that this court should follow *Subashini*'s case (which held consent from either father or mother is sufficient). In particular, the respondents stressed the point that the three children had uttered the affirmation of faith (dua kalimah syahadah) in Arabic before the first respondent.

[40] We are not persuaded by the respondents' argument. We chose to follow *Indira Gandhi* because that is the latest case decided by the Federal Court. We also agree and adopt the reasonings advanced by the Court of Appeal in *Pendaftar Muallaf* in that the Federal Court in *Indira Gandhi* had analysed the various provisions of the law and the previous decided cases including *Subashini* in coming to its decision; that by the principle of *stare decisis*, the High Court and Court of Appeal are bound by *Indira Gandhi*'s case.

[41] We also took note that pursuant to *Indira Gandhi*, the law is settled in that consent of both parents are required for conversion of a minor children. In *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301; [2021] 2 MLJ 181, at p. 184 para. 4, Her Ladyship Tengku Maimun Tuan Mat (Chief Justice) held that based on the authority of the Federal Court decision in *Indira Gandhi*, Ibrahim (father) had no right in law to unilaterally convert Rosliza to the religion of Islam when she was a minor without Yap's (the mother) consent.

[42] In *Chang Ah Mee v. Jabatan Hal Ehwal Agama Islam & Ors* [2003] 1 CLJ 458; [2003] 5 MLJ 106, a two-year-old girl was converted to Islam by her father without the consent of the mother. The mother challenged the legality of the conversion. She sought for a declaration that her daughter's conversion to Islam to be declared null and void. In interpreting art. 12(4) of the Federal Constitution, the High Court Judge held:

> The Constitution does not discriminate against the sexes and since the father and the mother have equal right over the person and property of an infant, the term "parent" in art. 12(4) must necessary mean both the father and mother if both are living. To construe otherwise would mean depriving, for example, a mother of her right as a parent to choose the religion of the infant under art. 12(4), if the father alone decides on the religion to be followed by the infant. To allow just the father or the mother to choose the religion would invariably mean depriving the other of the constitutional right under art. 12(4).

[43] We entirely agree with the High Court in *Chang Ah Mee* in the interpretation of art. 12(4).

[44] Apart from its binding effect on the lower courts, *Indira Gandhi* has established that:

(i) both the father and mother had equal rights to decide on the religion of a minor child. This is the constitutional right of each spouse under art. 12(4). So, consent must be obtained from both parents.

(ii) when custody, care and control of the children is given to the mother or father, the person who is entitled to the custodian has the right to decide all questions relating to the upbringing and education of the child including what religion the child should have.

(iii) consent should have been obtained from the person who is entitled to the custodian of the child before a child is converted. If consent is not obtained, her constitutional right is violated and the conversion is null and void.

[45] Coming back to the present case. We agree with the appellant's submission that the facts of this case is similar to that of *Indira Gandhi*. Therefore, it is reasonable for the appellant to expect that the High Court would follow *Indira Gandhi* and allowed her application.

[46] Unfortunately, the learned High Court Judge had disregarded *Indira Gandhi*. Instead, His Lordship relies on the Court of Appeal decision in the case of *Majlis Agama Islam Selangor v. Dahlia Dhaima Abdullah & Another Appeal* [2023] 2 CLJ 513. Briefly, the facts in that case are as follows. The respondent was born in 1986 to non-Muslim parents. Her father was a Hindu. Her mother was a Buddhist. Following her parents' separation in 1991, the respondent lived with her mother. The respondent's mother visited Jabatan Agama Islam Malaysia (JAIS)/Pertubuhan Kebajikan Islam Malaysia (PERKIM) to convert to Islam to marry a Muslim man. After the conversion, both mother and daughter, who was five years old at the material time, were issued with conversion cards by JAIS. Based on the cards issued by JAIS on 28 August 1993, the respondent had been converted on 17 May 1991. This was done without the consent of the respondent's father.

[47] In 2013, the respondent, by then aged 27, filed a summons at the Syariah High Court against Majlis Agama Islam Wilayah Persekutuan (MAIWP summons) for a declaration that she was no longer a Muslim. She contends that she never professed the religion of Islam. The Syariah High Court dismissed the MAIWP summons. The respondent's appeal to the Syariah Court of Appeal was also dismissed.

[48] The respondent then commenced originating summons (OS) at the High Court against the appellants, seeking for a declaration that she was not a person professing the religion of Islam. The High Court allowed the OS and granted the declaration sought by the respondent on the ground, *inter alia,* that the conversion of the respondent, when she was a minor, was in contravention of s. 147 of the Selangor Administration of Muslim Law Enactment 1952.

[49] Aggrieved, the appellant appealed to the Court of Appeal. The Court of Appeal, in majority decision, allowed the appeal and held: A

(i) the Syariah High Court and Syariah Court of Appeal have already decided that the respondent is a Muslim. The OS is *res judicata*. The High Court was wrong in holding the respondent had never been a Muslim; and B

(ii) that a Certificate of Conversion to Islam is conclusive proof of the facts stated therein.

[50] Based on the case of *Dahlia Dhaima*, the learned High Court Judge held that the certificate of conversions issued by the first respondent to the three children are conclusive proof they were Muslim and the conversion was valid. C

[51] Before us, learned counsel for the appellant submitted that it is wrong for the learned High Court Judge to refer and rely on *Dahlia Dhaima*'s on two grounds. First, that case does not deal with unilateral conversion. Second, a specific issue of whether consent from both parents are required before a certificate of conversion can be issued for conversion of a minor was not an issue in that case. We agree with the appellant's submission on both grounds. The truth is the facts and issues in *Dahlia Dhaima* and the present case is totally different. Having relied on a wrong case, the learned High Court Judge had reached an erroneous decision in that the certificate of conversion is conclusive proof the children are Muslim when the act of issuing the certificates is challenged by the appellant. D E

[52] The learned High Court Judge also relied on the case of *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* [2021] 3 CLJ 301. The issue in that case is whether Rosliza professes the religion of Islam. The Federal Court found Rosliza was raised in the Buddhist faith. F

[53] Applying *Rosliza*'s case, the learned High Court Judge held the three children continued professing the religion of Islam when they were in the appellant's custody. G

[54] Our first response is that the facts and issue in *Rosliza*'s case are totally different from the present case. Thus, *Rosliza* case is not applicable. Again, we find the learned High Court Judge had failed to address his mind to the crucial issue on the consent of both parents. Whether the children continue professing the religion of Islam is not an issue the parties had asked the court to decide. H

[55] To conclude, we find there were four errors of law and fact committed by the learned High Court Judge which warrant appellate's intervention. First, he had failed to abide the principle of *stare decisis* when he failed to follow *Indira Gandhi*. Secondly, he relied on cases which had totally different I

facts and issues from the case before him. Third, he had not answered the issue raised by the parties *ie*, whether the unilateral conversion is lawful. Fourth, he made a wrong decision. Had he followed *Indira Gandhi*, he would have decided that without the consent of the appellant, Nagahswaran had no right to convert the three children to Islam and thus, the unilateral conversion is unlawful.

Unconstitutional Law

[56] The second issue that the learned High Court Judge failed to answer is whether s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 is inconsistent with art. 12(4) of the Federal Constitution and is therefore null and void.

[57] The original s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 provides as follows:

> Keupayaan untuk memeluk agama Islam 117. Bagi maksud Bahagian ini, seseorang yang tidak beragama Islam boleh memeluk agama Islam jika dia sempurna akal:
>
> (a) sudah mencapai umur lapan belas tahun; atau
>
> (b) jika dia belum mencapai umur lapan belas tahun, ibu dan bapa atau penjaganya mengizinkan pemelukan agama Islam olehnya.

[58] Following *Subashini*'s case which held that consent from either father or mother is sufficient to convert a minor, s. 117(b) was amended by virtue of s. 7 of the Perlis Administration of the Religion of Islam (Amendment) Enactment 2016. The new amended s. 117(b) reads:

> Pindaan seksyen 117
>
> 7. Subseksyen 117(b) Enakmen ibu dipinda dalam teks Bahasa Malaysia dengan menggantikan perkataan "ibu dan bapa" dengan perkataan "ibu atau bapa".

[59] Since we have decided that the English version of the Federal Constitution to be the authoritative text, it is instructive to follow the Federal Court decision in *Indira Gandhi* which interprets art. 12(4) as follows:

> Since a literal construction of art. 12(4) would give rise to consequences which the legislative could not possibly have intended, the article should not be construed literally. A purposive reading of art. 12(4) that promotes the welfare of the child and is consistent with good sense would require the consent of both parents (if both are living) for the conversion of a minor child.

[60] Based on *Indira Gandhi*, the word "parent" in art. 12(4) means both parents. Therefore, s. 117(b) which used the singular word of "mother or father" is inconsistent with art. 12(4).

[61] Article 4 of the Federal Constitution provides that the Constitution is the supreme law of the Federation and any law which is inconsistent with the Constitution is void to the extent of the inconsistency.

[62] Again, the learned High Court Judge failed to address his mind to this issue. This is an error of law that justifies appellate intervention. Based on art. 4 of the Constitution, we held that s. 117(b) of the Perlis Administration of the Religion of Islam Enactment 2006 is inconsistent with art. 12(4) of the Federal Constitution and is therefore null and void.

Our Decision

[63] Based on the reasons mentioned above, we find there is merit in the appeal. The appeal is allowed. The decision of the High Court is set aside. Consequentially, we allow the appellant's judicial review application in prayers (i) to (ix) with no order as to costs.